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MICHAEL RODAK, JR.

NO. 73-63

IN THE

Supreme Court of the United States

ROBERT B. YOUNG, *Petitioner*

v.

CLEAR LAKE YACHT BASIN, INC., ET AL,
Respondents

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JAMES E. ROSS
927 Chamber of Commerce Bldg.
Houston, Texas 77002
Counsel for Respondents

Of Counsel:

THOMAS E. GILES
ROSS, GRIGGS & HARRISON
927 Chamber of Commerce Bldg.
Houston,Texas 77002

Alpha Law Brief Co., One Main Plaza, No. 1 Main St., Houston, Texas 77002



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To The Honorable Justices Of Said Court:

Respondents, CLEAR LAKE YACHT BASIN, SECURITY INSURANCE COMPANY OF NEW HAVEN, JACK YOUNG, and JACK ROBERTS, respectfully submit that Petitioner, ROBERT B. YOUNG's Petition for Writ of Certiorari should be denied for the following reason:

The decisions below in this matter are not in conflict with any holding of this Court, but instead are based on findings clearly within the discretion of the trial court.

RESTATEMENT OF THE CASE

It is believed necessary to clarify several matters concerning the holdings of the lower courts in this case before beginning discussion of the reasons the Petition for Writ of Certiorari should be denied.

The judgment of the United States District Court for the Southern District of Texas, is an exhaustive opinion reciting both the factual reasons and legal reasons defendants were exonerated from liability. The Court of Appeals for the Fifth Circuit rendered a *per curium* affirmance stating that its affirmance was based upon the District Court's opinion. Petitioner, nevertheless has asked this Court to review the affirmed fact finding of the District Court that Petitioner's injuries were proximately caused by his own negligence.

REASONS FOR DENYING THE WRIT

The District Court held, assuming arguendo the Petitioner's version of the facts, that when Petitioner proceeded to activate electrical appliances aboard a vessel absolutely reeking with gasolene fumes, with full knowledge of the danger involved, his own negligence proximately caused the explosion, and fire, which caused his injuries. This is a pure fact finding supported by the evidence offered before the trier of the facts and is not clearly erroneous. *MacAllister v. United States,* 348 U.S. 19, 99 L.Ed. 20 (1954). A finding that the Petitioner's injuries resulted from his own negligence disposed of Petitioner's cause of action without reaching any of the various legal theories that the District Court also held exonerated all Defendants.

Respondents submitted a lengthy brief in the United States Court of Appeals for the Fifth Circuit, and the District Court wrote a lengthy opinion with regard to the various legal theories which also supported the judgment of the Honorable courts below. We respectfully refer this Court to the District Court's opinion which is appended to the Petition for Writ of Certiorari on file herein for Respondents' reply to the various legal theories advanced by Petitioner in an attempt to avoid the District Court's dispositive fact finding. See also *Young v. Clear Lake Yacht Basin, et al,* 337 F. Supp. 1305, (S.D. Texas, 1972).

Petitioner's argument before this Court, just as before the Court of Appeals for the Fifth Circuit, is nothing more than an attack on the impartiality of the District Court and an attempt to re-litigate fact findings which two courts have found amply supported by the evidence. It is submitted that the decisions by the two lower courts are not in conflict with any decision of this Court, do not involve any Constitutional questions, and do not present any legal issues which merit this Court's attention. (28 U.S.C. 1254, and Supreme Court Rule #19)

CONCLUSION

Respondents, CLEAR LAKE YACHT BASIN, INC., SECURITY INSURANCE COMPANY OF NEW HAVEN, JACK ROBERTS, and JACK YOUNG, respectfully submit that while each has been exonerated from liability on one or more legal theories, all of which amply support the lower Court's holdings, the District Court's affirmed findings of fact are dispositive of this

case and not clearly erroneous and therefore the Petition for Writ of Certiorari should be denied.

ROSS, GRIGGS & HARRISON

By _____
James E. Ross

927 Chamber of Commerce Bldg.
Houston, Texas 77002
713/228-6304

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 1973, three true copies of the foregoing Brief in Opposition to Petition for Writ of Certiorari were placed in the United States mail, postage prepaid, to all counsel of record in this cause.

_____